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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,833	03/22/2004	Raymond Giannelli	C016/7080US	4229
21127 7590 02/03/2009 RISSMAN JOBSE HENDRICKS & OLIVERIO, LLP 100 Cambridge Street Suite 2101 BOSTON, MA 02114				
EXAMINER				
NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,833

Applicant(s)

GIANNELLI ET AL.

Examiner

TAM NGUYEN

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-21, 23 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-21, 23 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date 10/16/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-21, 23 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Root (326,247).

1. As to claims 10-21, 23 and 36, Root discloses an apparatus comprising a pair of left and right foot pedals (L) each having a foot sole receiving surface **for** standing on, the foot pedals being mounted on a frame (A) **for** movement in a back and forth direction along any one of a plurality of reproducible user selectable segments of an arcuate path between forwardmost upward and rearward most downward positions, a pair of left and right manually graspable input arms/handles (K) each pivotally interconnected to a respective one of the left and right foot pedals such that the left handle pivots forwardly together with forward and upward movement of the left pedal and backward and downward together with backward movement of the left pedal, and the right handle pivots forwardly together with forward and upward movement of the right pedal and backward and downward together with backward movement of the right pedal wherein the foot pedals are adjustable to move in an arcuate path of selected incline, the input arms are adjustable to move in a pivot path of selected degree of pivot, the pedals and input arms are interconnected to a pivot mechanism (I,T,S) adjustable to

a selected degree of pivot that adjust the arcuate path of the foot pedals and the degree of pivot of the input arms, the arms and pedals are interconnected to a reciprocating mechanism (F) that directs one of the left or right pedals to travel in the back and forth direction while simultaneously directing the other of the left or right pedals to substantially always travel in an opposite direction, the reciprocating mechanism comprises a rotating mechanism having a pair of pivot points (on disk F), disposed at substantially opposing 180 degree positions, interconnected to one of the left or right pedals and arms and the pedals and arms are interconnected to a respective pivot point by a link mechanism (J,H) (see Figs. 1-3 & lines 37-49 and 59-90). Root further discloses that foot pedals pivot or rotate less than about three degrees during movement between the forwardmost and backwardmost positions. As a matter of fact, it does not appear that the pedals pivot at all with respect to the axis defined by the pivot axis, M (see Fig. 1). Root also discloses that each of the foot pedals are mounted on the frame via a four bar linkage mechanism (A, G, I and the combination of J & H) (see Fig. 1).

Response to Arguments

Applicant's arguments filed April 22, 2008 have been fully considered but they are not persuasive.

2. Applicant argues that Root's apparatus does not support a user in an upright position. This argument stems from newly added limitations that the pedals each have a foot sole receiving surface "for standing on", the foot pedals being mounted and arranged... "for supporting the user upright" and the foot pedals being mounted and

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arranged... "for supporting the user standing thereon". Examiner respectfully disagrees with this contention since a user could stand on the foot pedals in an upright position. Although the intended use of the Root apparatus is for a user to lay horizontally on the saddle, the structure of the apparatus also allows for a person to stand on the foot pedals in an upright position. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

3. Applicant also argues that Root's apparatus does not enable the foot pedals to travel along any selected reproducible segment of an arcuate path. Examiner respectfully disagrees with this contention since the specification discloses that "the connecting rods may be raised on the levers" in lines 66-70. When the connecting points of the rods to the levers are adjusted either up or down, the length of the arcuate pathway changes; thus, when the connecting point between the rods and the foot levers is raised, the arcuate path has been effectively selected to move the foot pedals along a shorter segment. This capability to adjust the connecting point allows for a user to select various segments along the arcuate path. Assuming that a user moves the foot pedals fully forward and backward in the variously selected segments, the segments provide a reproducible pathway for the user's feet.

4. Applicant also argues that the foot pedals in Root's apparatus do not travel forwardly and upwardly or backwardly and downwardly. Examiner respectfully disagrees with this contention since the foot pedals are attached to levers (G) that are

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pivotaly attached to a base (A) wherein the rotation of the levers allows for the pedals to clearly travel forwardly and upwardly (toward the apex of the arcuate path) and rearwardly and downwardly. Applicant's argument regarding the purpose of the Root apparatus is irrelevant since the intended use of the Root apparatus does not preclude the structure of the Root apparatus from meeting the language of the claims.

5. Applicant also argues that the handles do not move forwardly and backwardly if the user were standing on the foot pedals. First, the claims do not require a user to be standing on the pedals during exercise wherein the handles would be moving. Rather, the claims merely disclose that the pedals are capable of supporting a person standing uprightly thereon. Second, just for argument's sake, if the apparatus was rotated 90 degrees as shown in Page 12 of applicant's Amendment, the handles do indeed move up and down but they also move slightly back and forth since they are attached to hand levers that are pivotaly attached to base A.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 1, 2009

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764